

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

APRIL B.,

Plaintiff,

**8:22-cv-743
(GLS/DEP)**

v.

**KILOLO KIJAKAZI, Acting
Commissioner of Social Security,**

Defendant.

SUMMARY ORDER

Pending is plaintiff April B.'s objection to a Report and Recommendation (R&R), (Dkt. No. 24), which recommends that defendant Commissioner of Social Security's decision be affirmed, (Dkt. No. 23). In sum and substance, the objection challenges Magistrate Judge David E. Peebles' recommended resolution of the medical equivalency finding of the Administrative Law Judge (ALJ).¹ (Dkt. No. 24.) First, April contends that the R&R incorrectly applied the substantial evidence, instead of the "overwhelmingly compelling" evidence, standard to displace the opinion of medical expert Dr. Bernard Gusoff, who opined that April's condition

¹ In the introductory sentence of her objection, April also purports to object to the R&R with respect to the residual functional capacity (RFC) finding, which is somewhat intertwined with the equivalency issue, but the substance of the filing makes no further mention of the RFC finding or Judge Peebles' recommendation with respect thereto. (Dkt. No. 24 at 1.)

medically equaled Listing 1.04. (*Id.* at 2-7.) More specifically, April contends that Magistrate Judge Peebles “failed to address [her] primary objection to the ALJ’s rejection of the Commissioner’s medical expert’s finding that [her] medical condition ‘equaled’ Listing 1.04(A)” and “failed to address the fact that there was no medical opinion that opposed Dr. Gusoff’s.” (*Id.* at 2.) In response, the Commissioner, who mentions in passing that April’s objection is a rehashing of previously-raised arguments, asserts that April mischaracterizes the R&R and Magistrate Judge Peebles’ review of the ALJ’s determination, and that the proper standard was applied and satisfied, all of which requires this court to adopt the R&R in full. (Dkt. No. 25 at 3-5.)

The objection, which repeats the substance of arguments made in April’s underlying brief, (Dkt. No. 12 at 15-26), that were rejected by Magistrate Judge Peebles, is general and triggers review for clear error only. See *Atkyns v. Colvin*, No. 6:13-CV-161, 2014 WL 4637090, at *2 (N.D.N.Y. Sept. 16, 2014) (citing *Almonte v. N.Y. State Div. of Parole*, No. Civ. 904CV484, 2006 WL 149049, at *4 (N.D.N.Y. Jan. 18, 2006)).

It is noteworthy that Magistrate Judge Peebles analyzed the issues complained of now thoroughly and he, in fact, addressed the arguments

April contends he ignored. (Dkt. No. 23 at 19-25, 36-38.) In any case, finding no clear error in the R&R, which addressed and resolved the very issues raised in the objection, it is adopted in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation (Dkt. No. 23) is **ADOPTED** in its entirety; and it is further

ORDERED that the Commissioner's motion for judgment on the pleadings (Dkt. No. 16) is **GRANTED**; and it is further

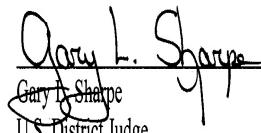
ORDERED that the plaintiff's motion for judgment on the pleadings (Dkt. No. 12) is **DENIED**; and it is further

ORDERED that the decision of the Commissioner is **AFFIRMED** and the complaint (Dkt. No. 1) is **DISMISSED**; and it is further

ORDERED that the Clerk close this case and provide a copy of this Summary Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

September 13, 2023
Albany, New York



Gary L. Sharpe
U.S. District Judge